



# ఆంధ్రప్రదేశ్ రాజపత్రము

## THE ANDHRA PRADESH GAZETTE

### PUBLISHED BY AUTHORITY

W.No.5

AMARAVATI, SATURDAY, FEBRUARY 1, 2020

G.588

#### PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

--X--

#### NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

#### PRINCIPAL SENIOR CIVIL JUDGE COURT, NELLORE

I.P.No. 37/2016

|                     |                           |
|---------------------|---------------------------|
| 1. Somu Masthanamma | ...Petitioners(Creditors) |
| 2. Duvvuru Radhika  |                           |

Vs

|                                   |                |
|-----------------------------------|----------------|
| 1. Vutukuru Venkata Krishna Reddy | ...Respondents |
| 2. Munagala Narayananamma         |                |
| 3. Ponguluru Subhashini           |                |

#### NOTICE

Notice is hereby given Under Section 9 of the Provincial Insolvency Act, 1920 that the petitioner prays to adjudicate of Respondent No.1 as insolvent and the said petition is allowed.

Dated this the 21<sup>st</sup> day of October, 2019.

T. HARITHA,  
Principal Senior Civil Judge,  
Nellore.

**PRINCIPAL SENIOR CIVIL JUDGE COURT,  
NELLORE.**

I.P.No. 37 OF 2016

1. Somu Masthanamma, W/o.Late Thirupal Reddy, Hindu, aged about 57 years, Residing at Kothavellanti Village & Post, Nellore Rural Mandal, SPSR Nellore District.
2. Duvvuru Radhika, W/o.D.P.Rarni Reddy, Hindu, aged about 34 years, Private Employee, Residing at Matumadugu Village and Post, Dakkili Mandalam, SPSR Nellore District A.P

vs.

1. Vutukuru Venkata Krishna Reddy S/o. Eswara Reddy, Hindu, aged about 45 years, Trader, Residing at Dhanalakshmpuram, Nellore City, SPSR Nellore District, A.P,
2. Munagala Narayananamma, W/o.Thiripal Reddy, Hindu, aged about 57 years, Residing at Dhanalakshmpuram Nellore City, SPSR Nellore District, A.P.,
3. Ponguluru Subhashini, W/o.Vutukuru Venkata Krishna Reddy, Hindu, aged about 40 years, Residing at Dhanalakshmpuram, Nellore City, SPSR Nellore District A.P,

This petition coming on 03.09.2019 for final hearing before me in the presence of Sri M.Leela Mohan and Sri.N. Venkaeswara Rao, Advocates for the Petitioners and the respondents 1 and 3 remained ex parte, and Sri.K.V.Suresh and Sri.D.Dhamareswar, Advocates for the 2<sup>nd</sup> respondent, and the matter having stood over for consideration till this day, this Court made the following:

## ORDER

The petitioners/creditors filed this insolvency petition against the respondents 1 to 3 under Section.9 of Provincial Insolvency Act,1920 to adjudge the 1<sup>st</sup> respondent as an insolvent; and to set aside the registered sale deed, dt.20-04-2016 bearing Document No.1661/2016 to the extent of half of the petition schedule property executed by the 1<sup>st</sup> and 3<sup>rd</sup> respondents jointly in favour of 2<sup>nd</sup> respondent to the extent of undivided  $\frac{1}{2}$  share of the property of the 1<sup>st</sup> respondent as null and void of the said registered sale deed; and to direct the Official Receiver, Nellore to take possession of the undivided  $\frac{1}{2}$  share of the 1<sup>st</sup> respondent in the petition schedule properties and to deal with the property as per the provisions of Provincial Insolvency Act.

**2) The brief averments on the petition are as follows:-** Petitioners are the creditors of the 1<sup>st</sup> respondent. 1<sup>st</sup> respondent borrowed an amount of Rs.3,00,000/- on 01-12-2012 from the 1<sup>st</sup> petitioner and executed a promissory note in favour of the 1<sup>st</sup> petitioner on the even date agreeing to repay the same either on demand or to order, for valid consideration. Later he failed to repay the same. Then the 1<sup>st</sup> petitioner filed a suit in OS No.613/2014 on the file of Prl. Senior Civil Judge, Nellore for realisation of the suit debt amount and the same was decreed on 31-03-2015 and the decree debt was subsisting. 1<sup>st</sup> respondent borrowed an amount of Rs.6,00,000/- on 01-12-2012 from the 2<sup>nd</sup> petitioner and executed two promissory notes each for Rs.3,00,000/- in favour of the 2<sup>nd</sup> petitioner on the even date agreeing to repay the same on demand or to order, for valid consideration. Later he failed to repay the same. Then the 2<sup>nd</sup> petitioner filed a suit in OS No.626/2014 on the file of I Addl. Senior Civil Judge, Nellore for realisation of the suit debt amount and the same was decreed on 14-10-2015 and the decree debt was subsisting. A liquidated sum is arrived at by the Judgment and decree dt.14-10-2015 against the 1<sup>st</sup> respondent by a competent Civil Court. The petitioners are the creditors of the 1<sup>st</sup> respondent. The debt due to both the petitioners is liquidated payable immediately in terms of the decree. The amounts to both the petitioners are put together is beyond Rs.500/- prescribed under Section 9(1) of the Act 1920. The petitioners are qualified to present the petition in terms of law.

The 1<sup>st</sup> respondent with a fraudulent intention and to defeat and deprive the petitioners to realize their decree debts committed an act of insolvency on 20-04-2016 by executing a registered sale deed along with his wife Ponguluru Subhashirii ie., 3<sup>rd</sup> respondent in favour of 2<sup>nd</sup> respondent. Both the respondents registered the petition schedule mentioned property in favour of 2<sup>nd</sup> respondent. Both the respondents registered the petition schedule mentioned property in favour of 2<sup>nd</sup> respondent. In the suit schedule mentioned property the 1<sup>st</sup> respondent had got  $\frac{1}{2}$  share and his wife got  $\frac{1}{2}$  share. The sale in favour of the 2<sup>nd</sup> respondent be declared as void with regard to the share of 1<sup>st</sup> respondent of the petition schedule property. The 1<sup>st</sup> respondent has no other immovable property. 1<sup>st</sup> respondent and his wife together purchased the suit schedule mentioned property on 27-05-2013 under Document No.2352/2013 as per recitals in their sale deed dated: 20-04-2016. The said sale is an act of insolvency. All the persons connected with the sale deed are interse relatives. The sale deed with regard to the  $\frac{1}{2}$ , share of the 1<sup>st</sup> respondent is voidable at the option of the creditors of the 1<sup>st</sup> respondent. Hence, the petitioners constrained to file this petition for adjudicating the 1<sup>st</sup> respondent as insolvent. Prays to allow the petition.

2) Notices were issued to respondents 1 to 3. Notice of Respondent 2 was served by post. Notices to Respondents 1 and 3 were served by way of publication in Newspaper, but they did not make their appearance before this court and did not contest the case. Hence, they were set ex parte. Respondents 1 and 3 remained ex parte. The respondent No.2 filed her Counter.

4) **The brief averments of the counter of the 2<sup>nd</sup> respondent are that:-** She denied the contents of petition, except one are specifically admitted by her is true. She submitted that she is not having any knowledge about the debt transactions between the 1<sup>st</sup> respondent and petitioners 1 and 2. She is not aware of the decrees obtained by the petitioners. She denied the allegation that the 1<sup>st</sup> respondent with a fraudulent intention and to defeat and deprive the petitioners to realize their decree debts committed an

act of insolvency on 20-04-2016 by executing a registered sale deed along with his wife in favour of 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent is fully aware of the decrees. She further submitted that as per the recitals of the sale deed Dt: 27-05-2013 under document No.2352/2013 1<sup>st</sup> respondent and his wife ie., 3<sup>rd</sup> respondent together purchased the petition schedule property. She is the bona fide purchaser of the petition schedule property. She purchased the same for a valuable consideration of Rs.25,50,000/- as per the registered sale deed Dt: 20-04-2016 under document No.1661/2016. The respondent paid the sale consideration of Rs.25,50,000/- by clearing the housing loan borrowed and due by 1<sup>st</sup> and 3<sup>rd</sup> respondents to the Andhra Bank, Nellore on this property for Rs.22,06,834-40 Ps under loan Account No.183430100000399 by way of Cheque No.15931 Dt: 20-04-2016. The said fact was clearly mentioned in the registered sale deed. She is a bona fide purchaser and sale consideration amount is deposited. She is in peaceful possession and enjoyment of the petition schedule property since the date of sale. 1<sup>st</sup> respondent is having some other properties. The respondents 1 and 3 and petitioners colluded together and filed this petition with a malafide intention. There is no cause of action for filing the petition. Prays to dismiss the petition.

5) On behalf of the Petitioners 1 and 2, the petitioners 1 and 2 themselves got examined as Pws.1 and 2 and got marked Exs.P1 to A5. Petitioners evidence closed. On behalf of the 2<sup>nd</sup> respondent, the husband of the 2<sup>nd</sup> respondent got examined as RW.1 and no documents were marked. Respondent Nos.1 and 3 remained ex parte. Respondents evidence closed.

6) Heard both sides.

7) Now, the points for determination is:

- 1. Whether there is a debtor and creditor relationship between petitioners and 1<sup>st</sup> respondent?**
- 2. Whether there are any grounds to declare the 1<sup>st</sup> respondent as an insolvent as he committed an act of insolvency by alienating his 1/2 share of the petition schedule property?**
- 3. Whether the sale deed executed by the 1<sup>st</sup> respondent in favour of the 2<sup>nd</sup> respondent is made in good faith?**

**POINT No.1:- 1. Whether there is a debtor and creditor relationship between petitioners and 1<sup>st</sup> respondent?**

8) Pws.1 and 2 reiterated the contents of the petition in their chief-examination affidavits. In support of their version they got filed certified copy of decree dt.31-03-2015 passed in OS No.613/2014 in favour of the 1<sup>st</sup> petitioner and certified copy of decree dt.14-10-2015 passed in OS No.626/2014 in favour of the 2<sup>nd</sup> petitioner and the same are marked as Exs.P1 and P3. Exs.P1 and P3 shows and proves, petitioners 1 and 2 obtained decrees for recovery of amount against the 1<sup>st</sup> respondent. They deposed in their evidence they obtained decrees against the 1<sup>st</sup> respondent and the said decrees were not satisfied as on today. Their evidence is supported by the contents of Exs.P1 and P3 certified copies of

decrees in OS No.613/2014 and OS No.626/2014. The decrees in the above suits shows the petitioners are the Decree Holders and the 1<sup>st</sup> respondent is the Judgment Debtor. Thus, the petitioners are able to show there is a debtor and creditor relationship between 1<sup>st</sup> respondent and petitioners. There is no dispute with regard to the actual amount due by the 1<sup>st</sup> respondent. 1<sup>st</sup> respondent did not deny the contents of the petition and did not deny the evidence of Pws.1 and 2.

9) In view of the unchallenged evidence of Pws.1 and 2 and contents of Exs.P1 and P3, the petitioners are able to prove the debtor and creditor relationship between the 1<sup>st</sup> respondent and them.

**POINT NO. 2 :- 2. Whether there are any grounds to declare the 1<sup>st</sup> respondent as an insolvent as he committed an act of insolvency by alienating his - share of the petition schedule property?**

10) In view of the unchallenged evidence of Pws.1 and 2 and contents of Exs. P1 and P3, the petitioners are able to prove that the 1<sup>st</sup> respondent borrowed amounts from them, later he became defaulter, then they filed suits and obtained decrees. The said fact was not disputed by the 1<sup>st</sup> respondent, There is no dispute with regard to the actual amount due by the 1<sup>st</sup> respondent to the petitioners. The petitioners categorically deposed with a view to defraud the creditors, the 1<sup>st</sup> respondent sold the property. The said fact was not denied by the 1<sup>st</sup> and 3<sup>rd</sup> respondents. Thus, the petitioners are able to prove that the 1<sup>st</sup> respondent sold the property to defraud the creditors ie., petitioners. Even a single creditor can maintain the petition. The debt amount is more than Rs.500/-. Hence, the petition is maintainable. If really the 1<sup>st</sup> respondent do not have intention to defeat the creditors and if he received the consideration amount, he could have paid the amount due under the decree, but he did not repay the amount due under the decrees, that shows his dishonest intention to defraud his creditors.

11) The contents of Ex.P2 shows, the 1<sup>st</sup> and 3<sup>rd</sup> respondents executed a registered sale deed in favour of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent sold the petition schedule property without discharging the amount due to the petitioners. 1<sup>st</sup> and 3<sup>rd</sup> respondents did not deny the contents of the petition and evidence of Pws.1 and 2. 2<sup>nd</sup> respondent submitted that the 1<sup>st</sup> respondent had other immovable properties to discharge the debts due to the petitioners. But the 2<sup>nd</sup> respondent did not file any documentary evidence in support of her version. From the evidence of petitioners, it is clear the 1<sup>st</sup> respondent has no other immovable properties to discharge the amount due under the decrees and he is having only the petition schedule property as on the date of obtaining decrees. Soon after obtaining decrees, he executed registered sale deed in favour of 2<sup>nd</sup> respondent with a view to defraud the creditors and to defeat the interest of the petitioners. The said fact amounts to act of insolvency. The sale deed was executed on 20-04-2016. Petition filed on 11-07-2016. That means petition is filed within 90 days from the date of execution of sale deed by the 1<sup>st</sup> respondent. Hence, the Insolvency Petition is maintainable under Section.9 of Provincial Insolvency Act by the creditors of the 1<sup>st</sup> respondent ie., petitioners herein. The act of the 1<sup>st</sup> respondent is an act of insolvency. Hence, 1<sup>st</sup> respondent is liable to be adjudged as an insolvent. Hence, 1<sup>st</sup> respondent is declared as insolvent.

**POINT No.3:- 3. Whether the sale deed executed by the 1<sup>st</sup> respondent in favour of the 2<sup>nd</sup> respondent is made in good faith?**

12) The contention of the 2<sup>nd</sup> respondent is she discharged the mortgage loan obtained by the 1<sup>st</sup> respondent to the bank, then she obtained registered sale deed from the 1<sup>st</sup> respondent. She paid the entire sale consideration amount. On behalf of the 2<sup>nd</sup> respondent, her husband gave evidence as RW.1. He reiterated the contents of the counter of the 2<sup>nd</sup> respondent in his chief-examination affidavit. In Civil Cases husband competent person to give evidence on behalf of wife as he got personal knowledge. In cross-examination, RW.1/Husband of 2<sup>nd</sup> respondent deposed, it reads as follows :-

*It is true I did not file any documentary evidence with regard to payment of sale consideration amount under Ex.P2 sale deed. It is true I did not file any documentary evidence with regard to other properties of 1<sup>st</sup> respondent.”*

He denied a suggestion he did not discharge the mortgage loan amount of Andhra Bank on behalf of 1<sup>st</sup> respondent or 1<sup>st</sup> respondent discharged the said mortgage loan with sale consideration amount. But he did not file any documentary proof to show he discharged the mortgage loan amount of the 1<sup>st</sup> respondent to the bank on his behalf. They did not mention in their counter so and so amount is due and they paid so and so amount. They did not file any documentary evidence with regard to auction of petition schedule property. In Ex.P2 there is no mention the debt pertains to which house was cleared.

13) The 2<sup>nd</sup> respondent not examined the attestors of the document and she did not examine any other person to prove Ex.P2 sale deed is supported by consideration. Except self serving testimony of husband of 2<sup>nd</sup> respondent, no other evidence is available on record. She did not issue any paper publication calling for objections. She did not file any documentary evidence. Except Ex.P2 certified copy of sale deed to prove the entire sale consideration amount mentioned in the document was paid to the 1<sup>st</sup> respondent. She did not examine the attestors to prove they saw while the consideration amount was paid to the 1<sup>st</sup> respondent. She did not file any documentary evidence to prove she is the bonafide purchaser. If the transferor and the transferee has got intention defraud or delay the creditors, transferor or transferee sharing the common intention, the transaction must be annulled and the assets must be brought into the common hotchpot for the benefit of the insolvent's creditors.

14) The counsel for the 2<sup>nd</sup> respondent relied on a decision in a case of **N.Subramania Iyer Vs, Official Received, Quilon reported in 1957 Legal Eagle 69 on the file of Hon'ble Supreme Court of India in equivalent citations : 1958 AIR (SC) 1 : 1958 SCR 257**. The said citation relating to the mortgage transaction, whether it is bonafide or not. In this case, it is not a mortgage transaction. It is relating to the sale transaction. The citation relied on by the 2<sup>nd</sup> respondent is not much helpful to prove their case.

15) In view of the above discussion, it appears the 2<sup>nd</sup> respondent is not a bonafide purchaser.

16) In view of the above discussion, the 1<sup>st</sup> respondent is liable to be adjudged as an insolvent and he executed Ex.P2 registered sale deed in favour of 2<sup>nd</sup> respondent with an ulterior motive to defraud the creditors i.e., petitioners herein and he colluded with 2<sup>nd</sup> respondent. The petition is filed within 90 days from the date of execution of sale deed as per Section.9(c) of Provincial Insolvency Act, 1920. Teh debt amount is more than Rs.500/- . The petitioners are able to prove the debtor and creditor relationship between the 1<sup>st</sup> respondent and them. Hence, the petition is allowed.

17) In the result, the Insolvency Petition is allowed with costs adjudging the 1<sup>st</sup> respondent as an insolvent.

As per Sec.27 of Insolvency Act 1920. the 1<sup>st</sup> respondent shall apply within three months from the date of this order for his discharge. If he failed to apply for his discharge, then the publication shall be made in Official Gazetee.

Publish an order of adjudication as per Sec.30 of Provincial Insolvency Act, 1920 in Official Gazette with details of notice of order of adjudication stating the names., addresses, descriptions of the insoivent 1<sup>st</sup> respondent, date of adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made in the manner as prescribed.

As per Sec.28 (2) of Provincial Insolvency Act, 1920 petition schedule property i.e.,  $\frac{1}{2}$  share in the petition schedule property belongs to the 1<sup>st</sup> respondent/insolvent shall forthwith vest in the Court and which then upon vests in Official Receiver U/Sec.56 (1) of Provincial Insolvency Act, 1920. The possession also vests with the Official Receiver. After Gazetee publication, the Official Receiver shall take steps by filing necessary petition to declare the Ex.P2 sale deed stands in the name of 2<sup>nd</sup> respondent is voidable and to set aside with regard to the  $\frac{1}{2}$  share of the 1<sup>st</sup> respondent.

As per Sec.28(7) of Provincial insolvency Act, 1920 after order of adjudication shall relate back to and take effect from the date of presentation of petition on which, it is made i.e., 11.07.2016.

The Office is directed to forward copy of order to the Official Receiver.

For filing publication made in Official Gazetee, Call on 21-01-2020.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 21<sup>st</sup> day of October, 2019.

**T. HARITHA,**  
Principal Senior Civil Judge,  
Nellore.

**APPENDIX OF EVIDENCE**  
**Witnesses Examined**

For Petitioners :-

PW1: S. Masthanamma

PW2: D. Radhika

For 1<sup>st</sup> and 3<sup>rd</sup> Respondents :-

For 2<sup>nd</sup> Respondent:-

RW.1 : M.Tirupala Reddy

- NONE - (Ex parte)

For 2<sup>nd</sup> Respondent

RW1: M. Tirupala Reddy

**Documents marked**

**For Petitioner**

| Exhibit | Date       | Description of the document   |
|---------|------------|---|
| P1      | 31-03-2015 | Certified copy of Decree in OS No.613/2014 passed in favour of 1st petitioner on the file of Prl. Senior Civil Judge's Court, Nellore for Rs.4,33,000/-.              |
| P2      | 20-04-2016 | Certified copy of Registered Sale deed executed by the respondents 1 and 3 in favour of the 3 <sup>rd</sup> respondent to the petition mentioned schedule property.   |
| P3      | 14-10-2015 | Certified copy of Decree in OS No.626/2014 passed in favour of 2nd petitioner on the file of I Addl. Senior Civil Judge's Court, Nellore.                             |
| P4      | 28-02-2015 | Certified copy of Amins report with relating to the attachment and proclaim.  |
| P5      | —          | Certified copy of the Petition and Affidavit in IA No.897/2014 in OS No.613/2014 and orders thereon dt. 18-03-2015 making the attachment of the property as absolute. |

For Respondents 1 and 3: NIL.

For Respondents 2 : NIL.

**T. HARITHA,**  
*Principal Senior Civil Judge,*  
*Nellore.*

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